

Message Text

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USARMY CID COMMAND

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SECDEF FOR PDASD(C)--CID COMMAND FOR CIOP-FR

E.O. 11652:N/A

TAGS: CGEN

SUBJECT: U.S. V. SIMMONS, ET AL. SUPREME CT. OF HONG KONG,
1975 NO. 856

REF: HONG KONG 5166

1. DOJ GRATEFULLY ACKNOWLEDGES RECEIPT OF PACKET OF DOCUMENTS MAILED APRIL 28. IF CONGEN, CID, GAO, OR ATTORNEY STEVENSON HAVE READILY AVAILABLE A SCHEDULE OF ASSETS OWNED BY THE DEFENDANTS WHICH ARE PRESENTLY SUBJECT TO COURT INJUNCTION, DOJ WOULD APPRECIATE RECEIVING A COPY THEREOF.

2. REPRESENTATIVES OF CONGEN, CID, GAO AND ATTORNEY STEVENSON SHOULD BE AWARE THAT CRIMINAL DIVISION OF DOJ HAS OPENED FORMAL INVESTIGATION INTO ACTIVITIES OF SIMMONS AND CRAIG RELATING TO SAME SUBJECT AS PRESENT CIVIL SUIT. SHOULD THERE BE OCCASION FOR ANY REPRESENTATIVE OF LIMITED OFFICIAL USE
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USG TO INTERVIEW OR INTERROGATE EITHER SIMMONS OR CRAIG RELATING TO SUBJECT MATTER OF SUIT, IT IS IMPERATIVE THAT SUBJECTS BE INFORMED OF PENDENCY OF FORMAL CRIMINAL INVESTIGATION AGAINST THEM, AND THEY MUST BE GIVEN WARNING THAT

ANY STATEMENTS WHICH THEY MAY MAKE, UNDER OATH OR OTHERWISE, MAY BE USED AGAINST THEM IN CRIMINAL PROCEEDINGS IN UNITED STATES. THEREFORE, ALL REPRESENTATIVES OF US WHO MAY

POTENTIALLY HAVE OFFICIAL DEALINGS WITH THESE TWO SUBJECTS SHOULD BE PUT ON NOTICE OF PENDENCY OF CRIMINAL INVESTIGATION.

3. CONCERNING PARA. 4, REFTEL, MARINI MAY BE INFORMED, IF OCCASION ARISES, THAT USG WOULD GIVE SYMPATHETIC CONSIDERATION TO REQUEST FOR DISMISSING HIM AS FORMAL PARTY DEFENDANT FROM CIVIL SUIT, AND NOT PURSUING ANY OTHER CLAIMS FOR DAMAGES AGAINST HIM IN ANY OTHER JURISDICTION, PROVIDED MARINI GIVES ASSURANCES TO COOPERATE FULLY WITH US REPRESENTATIVES IN HONG KONG AND, IF NEED BE, IN US, TO MAKE HIMSELF AVAILABLE IN FUTURE TO TESTIFY IN CIVIL SUIT IN HONG KONG ON BEHALF OF USG OR AT ANY CRIMINAL TRIAL WHICH MAY BE BROUGHT IN UNITED STATES; TO TESTIFY TRUTHFULLY; AND TO KEEP US AUTHORITIES (CONGEN) INFORMED AT ALL TIMES OF HIS WHEREABOUTS. DOJ AGREES THAT AT PRESENT MARINI SHOULD BE PERSONALLY SERVED WITH PROCESS UPON HIS ARRIVAL IN HONG KONG.

4. MAJ. ROSE IS REQUESTED TO CONSULT WITH ATTORNEY STEVENSON, AND TO CABLE LOCAL COUNSEL'S RESPONSES OR OPINIONS AS SOON AS PRACTICABLE TO DOJ REGARDING FOLLOWING POINTS:

A. WHAT IS STATUS OF CIVIL TRIAL DOCKET IN SUPREME COURT, I.E., CAN MR. STEVENSON ESTIMATE WITH ANY DEGREE OF CERTAINTY WHEN CASE MIGHT BE CALLED FOR TRIAL?

B. WHAT IS MR. STEVENSON'S ASSESSMENT OF EVIDENCE AGAINST DEFENDANTS? WHAT SPECIFIC LINK IN THE CHAIN OF EVIDENCE DOES HE CONSIDER WEAK? IF THERE ARE ANY PARTICULARLY WEAK SPOTS, IS THERE ANY PRESENT EXPECTATION THAT USG CASE MAY BE STRENGTHENED? HOW?
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C. DOJ ADVISED GENERALLY THAT PRE-TRIAL DISCOVERY PROCEEDINGS AS KNOWN IN AMERICAN LAW ARE UNAVAILABLE UNDER HONG KONG LAW. PLEASE CONFIRM. ON ASSUMPTION THAT PRE-TRIAL PROCEEDINGS UNAVAILABLE, HOW WILL CIVIL TRIAL DEVELOP? WOULD IT BE A JURY TRIAL OR A TRIAL TO THE COURT ONLY? WHO WOULD MR. STEVENSON EXPECT TO TESTIFY IN PERSON ON BEHALF OF USG? WOULD ANY OF THE AFFIDAVITS SUBMITTED THUS FAR ON BEHALF OF USG BE ADMISSIBLE AT THE TRIAL? HOW WOULD BANK DOCUMENTS OBTAINED TO DATE FROM HONG KONG AUTHORITIES BE ADMISSIBLE AT TRIAL? ARE THERE ANY PROBLEMS WITH THE ADMISSIBILITY OF DOCUMENTS FROM THE US DEFENSE ATTACHE'S OFFICE IN SAIGON? IS THERE

ANY POTENTIAL PROBLEM WITH THE PROBABLE UNAVAILABILITY
AS WITNESSES OF FORMER RVN OFFICERS WHO SIGNED THE FALSE
RECEIPTS FOR PLO SHIPMENTS?

D. WHAT IS MR. STEVENSON'S OVERALL ASSESSMENT OF
USG'S CASE, AND DOES HE HAVE AN OPINION AS TO USG'S ULTI-
MATE CHANCES OF SUCCESS?

5. CONCERNING PARA. 3, REFTTEL, DOJ ADVISES THAT ANY
SETTLEMENT PROPOSAL THAT MAY BE SUBMITTED ON BEHALF OF
ANY OF THE DEFENDANTS WOULD HAVE TO BE SPECIFIC AND IN
WRITING, AND ADDRESSED EITHER TO CONGEN OR TO MR. STEVENSON
(FYI: ANY SETTLEMENT IN THIS MATTER WOULD HAVE TO BE
APPROVED BY ATTORNEY GENERAL PERSONALLY, HENCE DOJ NOT IN
POSITION TO DELEGATE SETTLEMENT AUTHORITY. IN PRESENT
POSTURE OF CASE, IT IS UNLIKELY THAT SETTLEMENT OF USG'S
CIVIL CLAIM FOR RESTITUTION AND DAMAGES AGAINST AMERICAN
DEFENDANTS WOULD BE CONSIDERED FAVORABLY. SETTLEMENT
OF CLAIMS AGAINST FOREIGN DEFENDANTS WOULD RECEIVE MOST
CAREFUL CONSIDERATION, PROVIDED DOJ COULD BE SATISFIED
THAT THEY WOULD NOT RETAIN ANY PART OF ILL-GOTTEN GAINS
AND THAT THEY DO NOT HAVE A PRESENT OR PROSPECTIVE ABILITY
OF PAYING ANY SUBSTANTIALLY LARGE SUMS THAN MAY BE OFFERED
BY WAY OF DAMAGES AND RESTITUTION. END FYI).

6. DOJ WOULD ALSO APPRECIATE RECEIVING ANY INFORMATION
THAT CONGEN MAY HAVE CONCERNING INTENTIONS OF HONG KONG
PROSECUTING AUTHORITIES REGARDING INSTITUTION OF CRIMINAL
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PROCEEDINGS AGAINST ANY OF THE DEFENDANTS NAMED IN USG'S
CIVIL SUIT. WHICH DEFENDANTS? ON WHAT SPECIFIC
CHARGES? WHAT EFFECT, IF ANY, MIGHT INSTITUTION OF
CRIMINAL PROCEEDINGS HAVE ON USG'S CIVIL SUIT?

7. PLEASE SLUG FUTURE CABLES: SUBJECT - CGEN (U.S. V.
SIMMONS), AND OMIT REFERENCE TO "CHAMBLEE, L." AND
"REQUEST FOR JUDICIAL ASSISTANCE". KISSINGER

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